

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

KIRBY INLAND MARINE LP

Plaintiff

CIVIL ACTION NO. 14-878

V.

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M/V SUMMER WIND, her engines, tackles,*
appurtenances, etc, *in rem*, and SEA *
GALAXY, S.A., *in personam* CLEOPATRA*
SHIPPING AGENCY, LTD *

Defendants

ADMIRALTY

Pursuant to Rule 9(h) of the
Federal Rules of Civil Procedure

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PLAINTIFF KIRBY INLAND MARINE, LP's VERIFIED COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW, Plaintiff Kirby Inland Marine, LP ("Plaintiff") and files this it's Verified Complaint *in rem* against the M/V SUMMER WIND, her engines, tackle, appurtenances, apparel, furniture, equipment, and *in personam* against her owners, Sea Galaxy, S.A. and *in personam* against her owners, managers, charterers and/or operators, Cleopatra Shipping Agency, Ltd, and would respectfully show the court as follows:

I.

This is an admiralty and maritime claim *in personam* and *in rem* within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure. This Honorable Court has jurisdiction pursuant to 28 U.S.C. §1333. Venue is proper in this district and this division pursuant to 28 U.S. C. 1391(b)(3) as a judicial district in which the Defendant vessel was located.

II.

At all material times, Plaintiff Kirby Inland Marine, LP was and still is a business limited partnership, with its principle place of business in Houston, Texas.

III.

The Defendant vessel, M/V SUMMER WIND is an oceangoing ship, commonly described as a bulk carrier, believed to bear the International Maritime Organization number 9114139 and call sign A8G03. The M/V SUMMER WIND is a vessel of foreign registry believed to be documented and registered under the flag of Liberia. The Defendant vessel is currently located at anchorage within the Southern District of Texas and is scheduled to be located within the Port of Houston, Texas later today or tomorrow. The M/V SUMMER WIND was and now is a motor vessel employed in the carriage of cargo, and now is within this district and soon to be in this division, and within the jurisdiction of this Honorable Court. Exigent circumstances exist which make a hearing impracticable, as the ship will be leaving the Southern District quickly, therefore, a warrant for seizure is requested immediately.

The Defendant owner, Sea Galaxy, S.A. is a foreign corporation and at all times material herein, is and was the owner of the M/V SUMMER WIND.

The Defendant owners, managers, charterers, and/or operators, Cleopatra Shipping Agency, Ltd., are foreign corporations and at all times material hereto are and were the owners, managers, charterers and/or operators of the M/V SUMMER WIND.

IV.

The Plaintiff owns and operates the M/V MISS SUSAN, Kirby Barge 27705 and Kirby Barge 27706, and owned and operated such in March 2014.

V.

On or about March 22, 2014, the M/V SUMMER WIND collided with Kirby Barge 27706, then in the tow of the M/V MISS SUSAN, along with Kirby Barge 27705, causing serious damage to the Kirby Barge 27706 and Kirby Barge 27705. As a result of this collision, a

portion of the product contained in the Kirby Barge 27706 was released into the waterway in the Houston Ship Channel in an area commonly referred to as the Texas City Y. As a result of this collision, the product contained in the Kirby Barge 27706 was released into the waterway and damages to the Kirby Barge 27706 and Kirby Barge 27705 were sustained, causing Plaintiff to incur losses, damages and expenses of which Plaintiff has attempted to mitigate.

VI.

Upon information and belief, Plaintiff's losses, damages and expenses as a result of the M/V SUMMER WIND's collision with the Kirby Barge 27706, are estimated to exceed \$10,000,000 to date, and such losses, damages and expenses continue to accrue, plus prejudgment interest, costs and attorney's fees for which Plaintiff should be paid from the proceeds resulting from the sale of the M/V SUMMER WIND.

VII.

Plaintiff reserves the right to amend and supplement its Verified Complaint.

VII.

All and singular, the premises are true and correct and within the Admiralty and Maritime jurisdiction of the United States and this Honorable Court.

WHEREFORE, Kirby Inland Marine, LP, prays this Court:

1. Grant Plaintiff's motion to issue a warrant of seizure and issue a warrant of seizure post haste for the M/V SUMMER WIND, her engines, tackle, appurtenances, apparel, furniture and equipment, commanding the United States Marshall to arrest the vessel and take her into custody;
2. Order the M/V SUMMER WIND be condemned to be sold to pay the costs of *custodia legis*, and other damages owed to Plaintiff arising from its maritime lien

for damages caused by the M/V SUMMER WIND's collision with the Kirby Barge 27706 at the area known as the Texas City Y in the Houston Ship Channel;

3. Enter judgment after due proceedings in favor of Plaintiff awarding *custodia legis* expenses to be paid from Defendants vessel's sale proceeds, and its full amount of damages plus prejudgment interest, together with reasonable attorney's fees, interest and costs;
4. Recognize and enforce the claims of Plaintiff with preference and priority over all other persons whomsoever;
5. Grant all such other and further relief as justice may require.

Respectfully Submitted,

STEPP & SULLIVAN, P.C.

/s/ Jad J. Stepp

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